

100 10-101

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF NEW MEXICO**

**IN THE MATTER OF THE REGU-
LATION OF RATES, TERMS AND
CONDITIONS FOR THE PROVISION
OF POLE ATTACHMENT SPACE
TO CABLE TELEVISION SYSTEMS
BY TELEPHONE COMPANIES.**

FILED/ACCEPTED

APR 26 2010

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Federal Communications Commission
Office of the Secretary

Docket No. 1051

ORDER

1. At the present time, various cable television systems within the State of New Mexico attach their cables to existing utility poles owned by the telephone companies in the State of New Mexico subject to the jurisdiction of this Commission. Historically, the terms, conditions and rates for use of this space by cable television systems on telephone company poles have been the subject of private negotiations and written agreements between the affected utilities and the cable systems.

2. In 1978, an amendment to the Federal Communications Act (47 U.S.C. §224) was enacted whereby Congress granted regulatory jurisdiction over cable television pole attachments to the Federal Communications Commission in those states which did not exercise such regulation. Under this statute, a state may regulate the rates, terms, and conditions for pole attachments upon certification to the Federal Communications Commission that it does, in fact, regulate such rates, terms and conditions and that, in so regulating, the State has the authority to consider and does consider the interest of the subscribers of cable television services, as well as the interests of the consumers of the utility services.

3. By virtue of N.M. Const., Art. XI, §7, the State Corporation Commission of New Mexico (SCC) has the general and exclusive power to regulate and supervise telephone companies, within the State. Moreover, N.M. Const., Art. XI, §7 places within the jurisdiction of the SCC the responsibility to set rates for services provided by telephone companies at just and reasonable levels and generally in accordance with law.

4. N.M. Const., Art. XI, §7 provides, in part, the following:

...in the matter of fixing rates of telephone and telegraph companies, due consideration shall be given to the earnings investment and expenditure as a whole within the State.

5. Clearly, the provision by the New Mexico telephone companies of attachment space on their utility poles to cable television systems constitutes the rendering of a service for consideration, to these cable telephone systems. There can be no doubt that the utilization by cable television systems of telephone company poles has resulted in substantial and direct benefit to the cable television systems. Similarly, the utility poles owned by a telephone company are clearly facilities of that company which are made available for use by various customers, including cable television systems.

6. The SCC's jurisdiction over New Mexico's telephone companies also extends to their poles, which are an integral part of their facilities. Regulation of the service of providing pole attachment by telephone companies is necessary in the public interest in that all utility facilities should be operated to produce the optimal results to both utility and its subscribers who should pay a fair, just and reasonable rate for service received. The SCC is aware that revenue received by telephone companies from such sources as pole attachment rates reduces the revenue that must be earned from conventional utility services, thereby lowering the utility consumer's overall rate. Moreover, regulation of pole attachment rates by the SCC will enable the SCC to establish rates for such pole attachments that are compensatory and do

not result in the subsidization by telephone subscribers of cable television systems while, on the other hand, insuring that the cable television systems pay a fair and reasonable rate for the service they are provided in the form of pole attachments.

7. The SCC, pursuant to N.M. Const., Art. XI, §7 is specifically empowered to investigate rates for service provided by public utilities and to fix such rates as it shall determine to be just and reasonable and in compliance with law.

IT IS THEREFORE ORDERED THAT:

1. All telephone utilities regulated by the SCC which provide full attachment space for cable television systems shall file tariffs setting forth the rates, terms and conditions for such pole attachments.

2. The SCC shall certify to the Federal Communications Commission that the SCC regulates pole attachment rates, terms and conditions, and that the SCC has the authority to consider, and does consider, the interests of the subscribers of cable television systems as well as the interests of the consumers of the telephone utility services, as provided in 47 U.S.C. §224(C)(2).

3. This Order is effective immediately.

DONE this _____ day of June, 1982, at Santa Fe, New Mexico.



ERIC P. SERNA, Chairman

JOHN A. ELLIOTT, Commissioner

JIMMIE W. GLENN, Commissioner

ATTEST:

Richard I. Harris, Chief Clerk

BEFORE THE NEW MEXICO STATE CORPORATION COMMISSION


**IN THE MATTER OF THE REGULATION
OF RATES, TERMS AND CONDITIONS
FOR THE PROVISION OF POLE ATTACH-
MENT SPACE TO CABLE TELEVISION
SYSTEMS BY TELEPHONE COMPANIES.**

DOCKET NO. 1051

ORDER

An order regarding the regulation of pole attachment rates was previously entered in this matter. The Commission, upon its own motion, has decided to withdraw that order and set this matter for a hearing.

DONE this 20th day of September, 1983.


ERIC P. SERNA, Chairman


JOHN A. ELLIOTT, Commissioner


JIMMIE W. GLENN, Commissioner

ATTEST:


Richard I. Harris, Chief Clerk

LAW OFFICES OF
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September 22, 1983

Ms. Margaret Wood
Common Carrier Bureau
Federal Communications Commission
Room 6206
2025 M Street, N.W.
Washington, D.C. 20554

Re: New Mexico

Dear Ms. Wood:

Enclosed for your information is a copy of
the New Mexico Corporation Commission's Order withdrawing
its prior certification of pole attachment jurisdiction.

Sincerely,



Paul Glist

Enclosure

To: (Name, office symbol, room, building, Agency/Post)	Initials	Date
1. <i>Note to file</i>		
2. <i>New Mexico certification</i>		
3.		
4.		
5.		

Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

I spoke with Richard Harris, Chief Clerk of the Commission today re the Order in Docket 1051, dated Sept. 20, 1980. The New Mexico Comm. intends to regulate pole attachments, and believes it is doing so now, but it withdrew the previous order because of a procedural defect. He said he would send me a letter confirming our conversation.

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

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from our list of state certified,
and then would recertify in
the near future as soon as
they execute the order properly.
(this will probably be at the
beginning of 1984).

Margaret Wood